



Billing Code 4210-67

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5740-N-02]

**Federal Housing Administration (FHA) Multifamily Rental Project Closing Documents:
Notice Announcing Approval of Revised Documents**

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces that HUD has completed the notice and comment processes required by the Paperwork Reduction Act of the 1995 (PRA), and the Office of Management and Budget (OMB) has reviewed and approved the FHA-insured multifamily rental closing documents (Closing Documents), as revised, under the previously approved control number: 2502-0598. This notice highlights certain of the revisions to the documents that HUD made based on comments submitted in response to the April 1, 2014, 30-day Federal Register notice (30-day notice). The final versions of the Closing Documents, including redlines against the documents currently in use, can be viewed on HUD's website at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfhclosingdocuments.

Please note that the documents found at this website are for informational purposes only; participants must access the official version of the Closing Documents for FHA multifamily loan closings from HUD's forms resource webpage: <http://www.hud.gov/hudclips>.

FOR FURTHER INFORMATION CONTACT: Millicent Potts, Associate General Counsel for Insured Housing, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20310; telephone number (202) 708-1274.

This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

I. Background:

On October 29, 2013, and consistent with the Paperwork Reduction Act of 1995, HUD published for public comment, for a period of 60 days, a notice in the Federal Register advising that HUD was proposing technical and substantive revisions to the closing documents used in FHA multifamily rental projects based on the experiences of HUD staff working with the documents since 2011(60-day notice). (See 78 FR 64524.) This notice highlighted the proposed changes and advised that redline/strike-out and clean versions of the proposed revisions were available for review on HUD's website. On April 1, 2014, HUD published a 30-day notice in the Federal Register in accordance with the public comment process required by the PRA. *See* 79 FR 18305. The 30-day notice identified substantive changes that HUD made to the Closing Documents based on public comment submitted in response to the 60-day notice, and responded to significant issues raised by commenters on the Closing Documents. In addition to providing a summary of the changes made, HUD posted on its website the redline-strikeout versions of the documents depicting the changes that HUD initially proposed with the 60-day notice as well as clean and redline-strikeout versions with additional changes made in response to public comments received on the 60-day notice, so that industry participants and interested members of the public could see all of the changes that were being proposed to the Closing Documents.

This notice published today announces that HUD has completed the notice and comment processes required by the PRA, and that OMB has completed its review and approved the Closing Documents, as revised, under the previously approved OMB control number 2502-0598.

In response to the 30-day notice, HUD received comments from four (4) commenters. Commenters included the American Bar Association, a law firm, a private attorney, and a local municipality's housing and community investment department. All comments were carefully considered by HUD prior to presentation to OMB for final approval and re-authorization, pursuant to the PRA. In this notice, HUD is highlighting certain of the changes that were made and providing its rationale for not accepting certain comments. The final approved documents are available for your review in clean and redline-strike-out (against the documents currently in use) formats on HUD's website at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfhclosingdocuments.

II. Effective Date: These revised Closing Documents are required for transactions that receive a firm commitment on or after the date that is 30 calendar days after the date of this notice. As OMB approval for these documents has been received, parties may use these documents on a voluntary basis as of the date of this publication.

III. Discussion of Public Comments and Subsequent Document Revisions

General Comments

Section 50 Name Changes: A commenter noted that when a party named in section 50 of the Regulatory Agreement is changed, but the borrower does not change, the references to the those parties in the Regulatory Agreement, Note, and Security Instrument would all need to be revised. The commenter asked whether HUD would consider incorporating the section 50 parties into the Note and Security Instrument by reference to the Regulatory Agreement. HUD agreed with the comment and has made the necessary change to the documents.

Document Submissions: A commenter requested that HUD allow electronic submission of draft closing documents and final loan documents post-closing on CDs or thumb drives, in

lieu of several paper binders, in order to reduce the amount of paper as well as reduce the storage requirements for HUD. The commenter acknowledged that a single paper binder with original signatures could be required, but urged that there should be standardized submission requirements, as much as possible, in all HUD offices, in order to help standardize the process.

With respect to electronic copies of documents, the HUD Office of Chief Information Officer policy allows submission on CD but does not allow submission of materials on thumb drive because of an increased threat of corruption and harm to HUD information systems. With respect to the number of copies and whether by electronic or paper submission, HUD offices will be reevaluating their policy in connection with the current reorganization of the Office of Multifamily Housing.

Identity of Interest: A commenter asked for clarification regarding when an identity of interest exists pursuant to program obligations in Section 26 of the Lender's Certificate and Section 27 of the Request for Endorsement. Specifically, the commenter asked whether a conflict of interest exists when a counsel to the borrower has served as counsel to a lender in other transactions.

HUD does not opine on the ABA Model Rules of Professional Conduct. HUD notes that counsel may not represent Borrower and Lender on the same transaction for a number of reasons, including those which commenter has identified. To the extent commenter questions the applicability of MAP Guide § 2.6 or other HUD requirements, if counsel to a lender or borrower has appropriately represented a borrower or lender, respectively, on past transactions in accordance with the applicable state's rules of professional responsibility, such prior representation does not make counsel an employee of lender pursuant to the Map Guide or create an identity of interest with borrower or lender.

Note

Commenters have identified confusion with section 9(c) of the note and HUD has taken this opportunity to clarify this section. This section identifies circumstances that shall not be considered prepayments and shall not trigger prepayment premiums.

Regulatory Agreement

A commenter suggested deleting reference to the “Building Loan Agreement” in Section 8(b) because this section applies to refinancings with limited repairs where the Building Loan Agreement would be inapplicable. However, certain jurisdictions require the use of this document for repairs, so HUD has declined to make this change.

A commenter requested a change to Section 10(b) with respect to the initial deposit to the reserve for replacement, stating that requiring a specific amount in the Regulatory Agreement for a one-time deposit that occurs at closing is often problematic since the Reserve for Replacement amount can change. HUD agrees and has removed the first sentence of Section 10(b). The initial deposit to the reserve for replacement account should be disclosed, including any applicable transfer amounts, in the closing statement and the Request for Endorsement.

Opinion of Borrower’s Counsel and Instructions

One commenter asked HUD to reconsider previously submitted comments to the Opinion of the Borrower’s Counsel. The commenter asserts that the comments align with “customary practice” and with the practices of Fannie Mae and Freddie Mac, who, the commenter asserts negotiate their model opinion forms. Although HUD looks occasionally to the example of Fannie Mae and Freddie Mac, FHA’s role in the housing market, its obligations as the Federal Government and its congressional mandate are distinct. HUD has determined that the requested changes would increase the cost, time and administrative burdens associated with transactions

and conflict with HUD's interests in maintaining a uniform practice nationwide and protecting the Federal Government's interests. Thus, HUD declines to make commenter's requested changes.

Escrow Agreement for Working Capital

A commenter noted that the Escrow Agreement for Working Capital improperly references the firm commitment when providing for the allocation of escrow funds for new construction because the MAP Guide sets forth this policy. HUD has determined, however, that the firm commitment does set forth provisions regarding the working capital amount and should be reviewed in connection with the Escrow Agreement for Working Capital. There should not be discrepancies between the firm commitment and other HUD requirements; if participants notice discrepancies in their transactions, they should notify HUD's Office of Housing. HUD has also inserted the word "equally" in Section 2 of the Escrow Agreement for Working Capital in order to clarify HUD's MAP Guide requirement.

Security Instrument

A commenter noted that the provision in section 7(a)(ii) of the Security Instrument setting forth a monthly service charge in the event the note is held by HUD needs to be updated to reflect current policy and suggested a revision. HUD agrees and has updated the provision but has not used the language suggested by the commenter.

IV. Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: July 8, 2014.

Laura Marin, Associate General Deputy Assistant Secretary
for Housing—Federal Housing Commissioner.

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